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13
14 IN THE UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 JESUS ZEPEDA LOPEZ,

20 Defendant.

21 CASE NO. 1:20-CR-00099-DAD-BAM

22 STIPULATION REGARDING EXCLUDABLE
23 TIME PERIODS UNDER SPEEDY TRIAL ACT;
24 AND ORDER

25 DATE: June 8, 2022

26 TIME: 1:00 p.m.

27 COURT: Hon. Barbara A. McAuliffe

28
17 This case is set for status conference on June 8, 2022. On May 13, 2020, this Court issued
18 General Order 618, which suspends all jury trials in the Eastern District of California “until further
19 notice.” Under General Order 618, a judge “may exercise his or her authority to continue matters,
20 excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611 issued
21 on March 17, 2020 . . . with additional findings to support the exclusion in the Judge’s discretion.”
22 General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-by-case
23 exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the request of
24 counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will
25 impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This and previous
26 General Orders were entered to address public health concerns related to COVID-19.

27
28 Although the General Orders and declarations of emergency address the district-wide health
concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision

1 “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record
 2 findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-
 3 record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such
 4 failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153
 5 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit
 6 findings on the record “either orally or in writing”).

7 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 8 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-
 9 justice continuances are excludable only if “the judge granted such continuance on the basis of his
 10 findings that the ends of justice served by taking such action outweigh the best interest of the public and
 11 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
 12 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
 13 the ends of justice served by the granting of such continuance outweigh the best interests of the public
 14 and the defendant in a speedy trial.” *Id.*

15 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 16 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 17 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 18 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 19 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 20 recognized that the eruption created “appreciable difficulty” for the trial to proceed. *Id.* at 767-69; *see*
 21 *also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time
 22 following the September 11, 2001 terrorist attacks and the resultant public emergency).

23 The coronavirus poses a similar, albeit more enduring, “appreciable difficulty” to the prompt
 24 proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-
 25 exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act
 26 continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, --- F.3d ---, 2021 WL
 27 1589359 at *7 (9th Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is
 28 detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked

1 speedy trial rights since the case's inception; (4) whether a defendant, if detained, belongs to a
2 population that is particularly susceptible to complications if infected with the virus; (5) the seriousness
3 of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes;
4 (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed;
5 and (7) whether the district court has the ability to safely conduct a trial. *Id.*

6 In light of the foregoing, this Court should consider the following case-specific facts in finding
7 excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7)
8 (Local Code T4). If continued, this Court should designate a new date for the status conference. *United*
9 *States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be
10 "specifically limited in time").

11 STIPULATION

12 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
13 through defendant's counsel of record, hereby stipulate as follows:

14 1. By previous order, this matter was set for status on June 8, 2022.

15 2. By this stipulation, defendant now moves to continue the status conference until October
16 12, 2022, and to exclude time between June 8, 2022, and October 12, 2022, under 18 U.S.C.

17 § 3161(h)(7)(A), B(iv) [Local Code T4].

18 3. The parties agree and stipulate, and request that the Court find the following:

19 a) The government has represented that the discovery associated with this case
20 includes recorded telephone calls, approximately 500 pages of discovery, and digital discovery in
21 the form of several gigabytes. All of this discovery has been either produced directly to counsel
22 and/or made available for inspection and copying. The government has also provided a proposed
23 plea agreement to counsel for defendant.

24 b) Counsel for defendant desires additional time to review and copy discovery in this
25 matter and to conduct investigation and research related to the charges and research surrounding
26 potential defenses particularly in light of the plea agreement provided by the government, to
27 consult with his client, and to otherwise prepare for trial.

28 c) Counsel for defendant believes that failure to grant the above-requested

1 continuance would deny him the reasonable time necessary for effective preparation, taking into
2 account the exercise of due diligence.

3 d) The government does not object to the continuance.

4 e) Based on the above-stated findings, the ends of justice served by continuing the
5 case as requested outweigh the interest of the public and the defendant in a trial within the
6 original date prescribed by the Speedy Trial Act.

7 f) In addition to the public health concerns cited by the General Orders and
8 presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in
9 this case because the defendant has not invoked speedy trial rights since the case's inception and
10 the charge the defendant faces is serious and includes a mandatory minimum sentence if the
11 defendant is convicted.

12 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
13 et seq., within which trial must commence, the time period of June 8, 2022 to October 12, 2022,
14 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) because it results
15 from a continuance granted by the Court at defendant's request on the basis of the Court's
16 finding that the ends of justice served by taking such action outweigh the best interest of the
17 public and the defendant in a speedy trial.

18 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
19 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
20 must commence.

21 IT IS SO STIPULATED.

22 Dated: May 27, 2022

23 PHILLIP A. TALBERT
United States Attorney

24 /s/ LAURA JEAN BERGER
25 LAURA JEAN BERGER
26 Assistant United States Attorney

1 Dated: May 27, 2022

2 /s/ ROGER BONAKDAR
3 ROGER BONAKDAR
4 Counsel for Defendant
5 JESUS ZEPEDA LOPEZ

6 **ORDER**

7 IT IS SO ORDERED that the status conference is continued from June 8, 2022, to **October 12,**
8 **2022, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe.** Time is excluded pursuant to 18
9 U.S.C. § 3161(h)(7)(A), B(iv). The Court intends to set a trial date at the next status conference. If the
10 parties do not resolve the case in advance of the next status conference, they shall be prepared to set a trial
11 date at the status conference hearing.

12 IT IS SO ORDERED.

13 Dated: May 27, 2022

14 /s/ *Barbara A. McAuliffe*

15 UNITED STATES MAGISTRATE JUDGE